



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2900 FAX (603) 271-2456



December 31, 2001

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Nathaniel Tuttle d/b/a  
Tuttle's Auto Parts  
860 Turnpike Road  
New Ipswich, NH 0307

Re: Administrative Order No. WMD 01-017

Dear Mr. Tuttle

Enclosed is Administrative Order No. WMD 01-017 ("Order") issued this date to you as a result of inspections conducted on May 9, 1998, September 13, 2001, and September 26, 2001.

As stated in the Order, your scrap metal collection and recycling operation requires a standard solid waste permit ("Permit"). The auto salvage portion of your operation does not require a Permit. The Permit would allow you to collect, store, and transfer solid waste materials. Although it may be difficult to physically separate the two portions of your operations the scrap metal portion is required to comply with Env-Wm 2107.01 and 2900 of the New Hampshire Solid Waste Rules. Pursuant to Env-Wm 2107.04(a)(1), the scrap metal portion may not receive parts of motor vehicles that contain or have contained fluids or lubricants. Regardless of having a permit or not, all facilities are required to be operated in a manner that conserves natural resources and is protective of human health, the natural environment, and safety.

Should you have any questions regarding this order, please contact George Carrigan or me at 271-3899.

Sincerely,

Kenneth W. Marschner, Administrator  
Waste Management Programs  
Department of Environmental Services

CERTIFIED MAIL/RR # 7099 3400 0002 9769 7938

DB/FILE/ORDER  
Gretchen Rule, DES Legal Unit  
Public Information Coordinator, DES  
Richard Reed, WMD  
Jennifer Patterson, Sr. Assistant Attorney General  
Town Clerk, New Ipswich, NH



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December 31, 2001

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Judith A. MacDonald  
Hillsborough County Registry of Deeds  
300 Chestnut Street  
Manchester, NH 03101

Re: 860 Turnpike Road, New Ipswich, NH

Dear Ms. MacDonald:

Pursuant to RSA 147-A:14-a and RSA 149-M:6, XIII-a the Department of Environmental Services, Waste Management Division (DES) has enclosed for recording Administrative Order No. WMD 01-017 (Order). The Order was issued to Nathaniel Tuttle d/b/a Tuttle's Auto Parts, 860 Turnpike Road, New Ipswich, NH. The property for which the Order is being recorded is located at 860 Turnpike Road, New Ipswich, NH (Property). Nathaniel Tuttle is the owner of record for the Property identified on the New Ipswich Tax Map No. 7, lot No. 33, from Deed Book No. 2639, Page 103.

It should be noted that RSA 147-A:14-a and RSA 149-M:6, XIII-a state that no fee shall be charged for recording an order; however, a fee may be charged for discharging an order. A copy is attached for your reference.

Should you have any questions on this matter please contact George Carrigan or me at (603) 271-3899.

Sincerely,

Kenneth W. Marschner  
Administrator  
Waste Management Programs

Certified Mail/RR#: 7099 3400 0002 9769 7907

CC: DB/File/Order  
P. O'Brien, Ph.D., DES  
Gretchen Rule, DES Legal Unit  
Town Clerk, New Ipswich, NH

Enclosure



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2900 FAX (603) 271-2456



Nathaniel Tuttle d/b/a  
Tuttle's Auto Parts  
860 Turnpike Road  
New Ipswich, NH 03071

**ADMINISTRATIVE ORDER  
No. WMD 01-017**

December 31, 2001

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Nathaniel Tuttle, d/b/a Tuttle's Auto Parts pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Nathaniel Tuttle is an individual d/b/a Tuttle's Auto Parts and having a mailing address of 860 Turnpike Road, New Ipswich, NH 03071.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1000 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100-300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Nathaniel Tuttle is the owner of land at 860 Turnpike Road, New Ipswich, NH, more particularly described in a deed recorded in the Hillsborough County Registry of Deeds at Book 2639, Page 103, and identified on New Ipswich Tax Maps as map 7, Lot 33 ("Site").
4. Prior to November 3, 1997, Tuttle's Auto Parts was a New Hampshire corporation registered with the Secretary of State's Office to do business in New Hampshire. On November 3, 1997, the Secretary of State's Office dissolved the corporation for failure to pay annual report fees in 1996 and 1997.
5. Tuttle's Auto Parts notified DES and the U.S. Environmental Protection Agency ("EPA") of its activities as a New Hampshire hazardous waste generator on February 8, 1989. EPA Identification Number NHD982745549 was assigned to Tuttle's Auto Parts facility at the Site.

6. On May 9, 1998, DES personnel conducted an inspection ("1998 Inspection") of the Site. The purpose of the inspection was to determine Mr. Tuttle's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.

7. During the 1998 Inspection, DES personnel observed one unlabeled 275-gallon tank of used oil, several unlabeled and unsealed containers of used oil, an unlabeled and unsealed container of antifreeze, a lead-acid battery stored on the ground, an active floor drain in the garage, and an oily sheen on the pond. The floor drain emptied into an adjacent drainage swail.

8. As a result of the 1998 Inspection, a Report of Initial Complaint Investigation ("RICI") was issued to Mr. Tuttle advising him to label and seal all used oil containers; label and seal all containers of hazardous waste; seal all active floor drains; notify DES as a burner of used oil; and containerize released material into appropriate, compatible containers.

9. On September 13, 2001, DES personnel conducted a follow-up inspection ("2001 Inspection") of the Site. DES personnel observed or learned the following:

- a. Steel plates had been placed over the floor drain;
- b. Two unsealed and unlabeled 55-gallon drums of automotive paint waste were present at the Site;
- c. Mr. Tuttle accepts scrap metal and crushes cars at the Site;
- d. Approximately 10,000 scrap tires exist on-site;
- e. One 30 cubic yard pile of construction and demolition debris which came from demolished trailers is located on the Site; and
- f. Several areas of soil staining are present outside the maintenance bays.

10. As a result of the 2001 Inspection, a second RICI was issued to Mr. Tuttle advising him to label and seal all used oil containers; label and seal all containers of hazardous waste; seal all active floor drains; containerize released material into appropriate, compatible containers; and remove all solid waste to a permitted solid waste facility.

11. On September 26, 2001, DES personnel continued the inspection of the Site and found that Mr. Tuttle had only labeled the 275-gallon tank of used oil. No other violations were corrected. DES personnel discussed solid waste facility permitting issues with Mr. Tuttle.

12. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste with the hazardous waste number of NH01.

13. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."

14. RSA 147-A:2, IV defines "[hazardous waste] facility" as "a location at which hazardous waste is subjected to treatment, storage or disposal and may include a facility where hazardous waste is generated."

15. Mr. Tuttle generates used oil at the Site as a result of removing the oil from automobiles.

16. Mr. Tuttle is a generator of hazardous waste as defined by RSA 147-A:2, VI
17. The Site is a hazardous waste facility as defined by RSA 147-A:2, IV
18. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."
19. Env-Wm 502.01 requires that all generators of waste shall determine if that waste is a hazardous waste as set forth in Env-Wm 401.01.
20. The stained soil observed by DES personnel during the 2001 Inspection represents a discharge of hazardous waste that requires the responsible party to cleanup the discharge. Mr. Tuttle did not conduct a hazardous waste determination on the stained soil.
21. Mr. Tuttle did not conduct a hazardous waste determination of the two 55-gallon drums of automotive paint waste observed by DES personnel during the 2001 Inspection.
22. Env-Wm 807.06(b)(6) requires all used oil tanks and containers to be maintained and operated so as to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or onto ground or surface waters.
23. Mr. Tuttle did not prevent spillage of used oil
24. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.
25. During the 1998 and 2001 Inspection, DES personnel observed several unlabeled containers of used oil.
26. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.
27. During the 1998 and 2001 Inspections, DES personnel observed several unsealed containers of used oil.
28. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
29. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product .... which is composed of wholly or partly of such materials as .... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

30. Env-Wm 102.42 defines “construction and demolition debris” in part, as “non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals or other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”

31. The tires, construction and demolition debris, and scrap metal observed by DES at the Site during 2001 Inspection are solid waste as defined by RSA 149-M:4, XXII.

32. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

33. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

34. Env-Wm 102.116 defines “owner” as “a person who owns a [solid waste] facility or part of a [solid waste] facility.”

35. Nathaniel Tuttle is the owner of a solid waste facility.

36. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private solid waste facility without first obtaining a permit from [DES].”

37. A review of DES files show that Tuttle’s has neither applied for, nor holds a permit to operate a solid waste facility at any New Hampshire location.

38. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
  - (1) The diameter of the piles shall not exceed 25 feet;
  - (2) The height of the piles shall not exceed 15 feet;
  - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
  - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolitic oils or other liquids generated by fire; and
  - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

39. The tires observed during the 2001 Inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).

#### **D. DETERMINATION OF VIOLATIONS**

1. Nathaniel Tuttle d/b/a Tuttle's Auto Parts has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
2. Nathaniel Tuttle d/b/a Tuttle's Auto Parts has violated Env-Wm 2605.02(b) by failing to store and manage scrap tires at the Site in accordance with the regulations.
3. Nathaniel Tuttle d/b/a Tuttle's Auto Parts has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on drums of automotive paint waste as well as the stained soil.
4. Nathaniel Tuttle d/b/a Tuttle's Auto Parts has violated 513.02(a) by failing to remediate a discharge of hazardous waste.
5. Nathaniel Tuttle d/b/a Tuttle's Auto Parts has violated 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."
6. Nathaniel Tuttle d/b/a Tuttle's Auto Parts has violated 807.06(b)(5) by failing to seal all containers of used oil destined for recycle.
7. Nathaniel Tuttle d/b/a Tuttle's Auto Parts has violated 807.06(b)(6) by failing to prevent discharges of used oil to the soil.

#### **E. ORDER**

Based on the above findings, DES hereby orders Nathaniel Tuttle d/b/a Tuttle's Auto Parts as follows:

1. **Immediately** cease accepting or bringing any solid waste (e.g. construction and demolition debris, white goods, and non-automotive scrap metal) to the Site until such time that a solid waste permit for the scrap metal collection and recycling portion of the operation has been obtained for the Site.
2. **Immediately** ensure that all by-pass automotive derived solid waste (i.e. scrap metal, tires, etc.) is actively managed, as defined by Env-Wm 102.04, and in accordance with RSA 149-M and the Solid Waste Rules.
3. **Within 45 days** of this Order, store all scrap tires on Site in accordance with Env-Wm 2605.02(b).

4. **Within 45 days** of this Order, submit to DES for approval a Scope of Work prepared by a qualified environmental consultant for: a) the removal of all solid waste (non-automotive materials), scrap tires, construction and demolition debris, stained soil, and drums of automotive paint wastes at the Site; and b) the identification of the nature and extent of soil and groundwater impacts at the Site from discharges to the environment. Include as part of the Scope of Work a schedule which details when the work will be done.
5. If analyses of the soil or the groundwater shows any exceedance of the cleanup standards as detailed in the DES Contaminated Sites Risk Characterization and Management Policy dated January 1998, initiate activities to satisfy the requirements of the policy within 30 days of receiving the analyses.
6. **Within 20 days** of this Order, submit a written status report identifying the consultant required by item E.3 and provide documentation that certifies the consultant has been retained
7. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste, hazardous waste/used oil, and stained soil at the Site to a facility or facilities permitted to accept such wastes.
8. Upon DES approval of the Scope of Work and proposed schedule, conduct a hazardous waste determination as specified in Env-Wm 502.01 on the two 55-gallon drums of automotive paint waste and the stained soil. Submit the results together with any other supporting data, material safety data sheets, chemical analyses, or process knowledge to DES. A complete hazardous waste determination will require you to determine if the waste is a federal hazardous waste for ignitability or toxicity. Waste determined to be hazardous must be handled pursuant to the Hazardous Waste Rules.
9. **Immediately** ensure that all containers of used oil destined for recycle are properly labeled with the words "Used Oil for Recycle" as specified by Env-Wm 807.06(b)(4).
10. **Immediately** ensure that all containers of used oil destined for recycle are properly sealed at all times, except when used oil is being added to or removed from the containers as specified by Env-Wm 807.06(b)(5).
11. **Within 7 days of the disposal** of the non-automotive solid waste, forward copies of disposal receipts to DES.
12. **Within 7 days of the disposal** of the stained soil, forward copies of disposal receipts to DES.
13. **Within 7 days of the disposal** of the automotive paint waste, forward copies of disposal receipts and/or hazardous waste manifests to DES.
14. Submit one written status report to DES **within 60 calendar days** of this Order and a second report **within 120 calendar days** of this Order, certifying that corrective measures have been implemented in accordance with the approved Scope of Work. Include in each report supporting documentation describing those measures taken to achieve compliance during the reporting period, together with copies of any written plans or proceedings developed.



Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Kenneth W. Marschner, Administrator  
DES Waste Management Division  
6 Hazen Drive  
Concord, NH 03301  
Fax: (603) 271-2456


#### **F. APPEAL**

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve you of the obligation to comply with the Order.

#### **G. OTHER PROVISIONS**

Please note that RSA 147-A and RSA 149-M provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Nathaniel Tuttle remains obligated to comply with all applicable requirements, in particular the Hazardous Waste Rules and the Solid Waste Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.

  
**COPY**  
Philip J. O'Brien, Ph.D., Director  
Waste Management Division

  
**COPY**  
George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7099 3400 0002 9769 7907

cc: DB/FILE/ORDER  
Gretchen Rule, DES Legal Unit  
Public Information Coordinator, DES  
Town Clerk, New Ipswich, NH  
Jennifer Patterson, Sr. Assistant Attorney General